

SOUTH DERBYSHIRE DISTRICT COUNCIL

**LICENSING PROTOCOL
AND
PROCEDURE**

LICENSING PROTOCOL AND PROCEDURE

CONTENTS

No.		Page
I	INTRODUCTION - THE LICENSING SYSTEM	3
II	LICENSING PROTOCOL AND PROCEDURE	
A.	The Decision-Making Framework	
A1.	Registration and Declarations of Interest	4-5
A2.	Confidentiality	6
A3.	Licensing Proposals submitted by Members and Officers; and Council	6
A4.	Voting and impartiality	6-7
A5.	Pre-Application discussions/Informal Site Meetings	7-8
B.	Third Party Relationships	
B1.	Lobbying of Members and Circulation of Unofficial Information	9
B2.	Member Training	10
B3.	Gifts and Hospitality	10
B4.	Impartiality and Respect	10
Appendix 1	Hearings Procedure for Determining Objections/Representations under the Licensing Act 2003	1-12

I INTRODUCTION

The Licensing System

South Derbyshire District Council's Licensing and Appeals Committee operates in a quasi-judicial way in determining licensing applications. Those applications which are not subject to objection are determined under powers delegated to the Director of Community Services. This Protocol is written having regard to the Council's commitment to the principles of good enforcement, particularly openness and consistency that are included within the National Enforcement Concordat.

The Committee exercises licensing and registration requirements under the Licensing Act 2003 (alcohol, regulated entertainment and late night refreshment). Applications are referred for Members' consideration where objections have been lodged by relevant parties that are not deemed to be frivolous or vexatious and where officers have reservations about the appropriateness of an application or the suitability of an applicant. These applications and appeals will be dealt with by a Sub-Committee of the Licensing and Appeals Committee.

The decisions that the Sub-Committee makes can be significant. The decisions can have a considerable effect on the value of premises or other capital assets, on the amenities of people living near and on the lives of applicants.

In all cases, human rights and natural justice considerations dictate that the Sub-Committee adheres to the following principles in that decisions must:-

1. Be made on the individual merits of a case.
2. Have regard to all relevant national and local guidance.
3. Be made impartially and in good faith.
4. Be made by the body that receives all the relevant information and evidence.
5. Relate to the issue or question placed before the Sub-Committee.
6. Be based only on consideration of relevant and material matters, not hearsay or gossip.
7. Be rational and reasoned.
8. Be made in a way that does not give rise to public suspicion or mistrust.

The purpose of this Protocol is to set out in detail how Members should act and the procedures which should be followed to ensure that Members not only act in a fair and proper manner but are also seen to do so.

This Protocol has been prepared with a particular emphasis on Members who serve on the Council's Licensing and Appeals Committee/Sub-Committee but its content is also relevant to all other Members and also to Officers in all other services.

South Derbyshire District Council, along with all other Local Authorities, adopted a Code of Conduct which specifies the obligations imposed on Members and defines personal and prejudicial interests and how these will affect the way a Member behaves. This Code of Conduct, which every Member has signed up to, is the statutory base to which this Protocol is added. In some areas, this Protocol will extend, or go further than the Code of Conduct and in those cases, the Protocol should be followed.

II LICENSING PROTOCOL AND PROCEDURE

A. THE DECISION MAKING FRAMEWORK

A1. Registration and Declarations of Interest

A1.1 The Local Government Act 2000 and the Council's Code of Conduct place requirements on Members on the registration and declaration of their interests and the consequences for the Member's participation in consideration of an issue, in light of those interests. Guidance on the registrations and declaration of interests may be sought from the Council's Monitoring Officer. However, ultimate responsibility for fulfilling the requirements rests individually with each Member.

A1.2 A register of Members' interests is maintained by the Council's Monitoring Officer, which is available for public inspection during office hours. A Member must provide the Monitoring Officer with written details of relevant interests within 28 days of his/her election, or appointment to office. Any changes to those interests must similarly be notified within 28 days of the Member becoming aware of such changes.

A1.3 The Council's Code of Conduct uses the terms "personal" and "prejudicial" interests. The Code defines a personal interest in any matter under discussion as:-

1. If the matter relates to an interest in respect of which the Member has given notice in the statutory register of Members' interests; or
2. If a decision upon the matter might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the Authority's area, the well-being or financial position of themselves, a relative or a friend, or
 - any employment or business carried on by such persons;
 - any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000;
 - any body which the Member is required to register in the statutory register of interests, in which such persons hold a position of general control or management

A1.4 Where a Member considers he/she has a personal interest in any matter, he/she must declare its existence and the nature of the interest at the beginning of the meeting or when the interest becomes apparent. Members should be clear and specific in identifying the item on the agenda in which they have an interest and the nature of the interest. This declaration must be made at meetings of the Council, its Committees, Sub-Committees and Working Groups. However, the Member can still take part in the meeting and vote, unless the personal interest is also a prejudicial interest.

A1.5 The Member then needs to consider whether the personal interest is a prejudicial one. The Council's Code of Conduct provides that a personal interest becomes a prejudicial one "...if the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest." If a Member has such an interest, he/she should not participate in a discussion on the matter and must withdraw from the room and must not seek improperly to influence a decision in the matter. This means that a Member with a prejudicial interest cannot represent, be an interested party or be part of the decision making process.

Examples of personal and prejudicial interests might therefore include where the Member (or their friend, family or employer):-

- lives very near to the premises in question (likely to have a personal interest and potentially a prejudicial interest)
- is a frequent visitor to the premises in a personal capacity (potentially a personal and a prejudicial interest)
- belongs to a lobby or campaign group which may be directly impacted by the outcome of the Sub-Committee hearing (personal and prejudicial interest)

A1.6 The Council's Code of Conduct states that a Member may regard himself/herself as not having a prejudicial interest in a matter if the matter under discussion relates to:-

- another Authority of which he/she is a member
- another Public Authority in which he/she has a position of general management or control
- a body to which he/she has been appointed or nominated as a representative of the Authority

The Member would need to declare the interest, but could participate if one of the above exceptions apply.

A1.7 One of the exceptions may occur where the Member carries out a function for another Public Authority or another Local Authority which is making an application for a licence or which is making a representation. For example, if the school is applying for a premises licence and the Member is on the Board of Governors of the school. It may also occur where the Member is a 'dual hatted' Member and is part of the District Council's Sub-Committee, but also a Member of the County Council which is applying for a premises licence for its land. In such situations, however, the Member may not wish to avail themselves of the exception set out in paragraph A1.6, as to do so may put the Council at risk of being accused of bias.

A1.8 Despite the exception referred to in paragraph A1.6 above, if a Member, in advance of the decision making meeting, has taken a firm view on the licensing matter, either in meetings of the other body or otherwise, it may be difficult for that Member to demonstrate that, in participating in a decision, all the relevant facts and arguments have been taken into account. Where they do participate in a decision in those circumstances, they might place the Council in danger of Judicial Review. The exception in the Code of Conduct would only operate in the licensing context, if the Member had scrupulously avoided forming a fixed view on the issue in advance.

This is the general approach taken by this Protocol and appropriate conduct in relation to membership of other bodies and the effects of such membership on participation in the decision making process is expanded in Section B1 on lobbying.

A2. Confidentiality

- A2.1 It will be unusual for licensing applications or other matters to be treated as confidential items discussed and determined after the exclusion of the press and public, but it may occur. The grounds why this may occur are set down in the Local Government Act 1972 and the Council's Constitution, and are most likely to be in relation to the conduct of legal proceedings, or disclosure of personal details. Members are expected to treat the information as confidential and are referred to the Code of Conduct which indicates that a breach of this confidentiality may be a breach of the Code of Conduct.

A3. Licensing Proposals submitted by Members and Officers; and Council

- A3.1 Proposals to South Derbyshire District Council by serving and former Members and Officers and their close friends and relatives can easily give rise to suspicions of impropriety. So indeed can proposals for Council owned premises.
- A3.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in such a way that gives no grounds for accusations of favouritism.
- A3.3 Members of the Licensing and Appeals Committee / Sub-Committee should not act as agents, or submit licensing applications for other parties. To do so would give rise to suspicion that the Member was not impartial or may influence other Members in the decision making process.
- A3.4 A Member or Officer who either submits a licensing application or development proposal on their own behalf or acts as an agent for a person/body who submits a licensing application must, whether that Member's or Officer's involvement is apparent from the application documentation or not, notify the Director of Community Services and the Council's Monitoring Officer of the submission of the application or proposal. That, notification must be in writing and must be sent at the same time as the submission of the application or proposal.
- A3.5 Applications made in respect of Council owned premises must be dealt with on exactly the same basis as applications submitted by members of the public.

A4. Voting and Impartiality

- A4.1 Licensing and Appeals Sub-Committee Members must vote in the interests of the District as a whole and must not vote on the basis of local Ward interests that may be contrary to a balanced licensing assessment in the light of the evidence before the Members and wider policies and guidance. The overriding duty of a Sub-Committee Member is to the whole community, rather than just the people living in their Ward.
- A4.2 Members of the Sub-Committee must not declare which way they intend to vote in advance of the consideration of an application by the Sub-Committee. To do so would, in effect, be pre-judging the application and expose the Council to the possibility of legal challenge or allegation of maladministration. Members must not make their minds up until they have read the relevant Sub-Committee reports and heard the evidence and arguments on both sides at the Sub-Committee Meeting.

- A4.3 If a Member of the Sub-Committee does declare his or her support or opposition for a proposal before the matter has been put before the Sub-Committee, where that Member would be entitled to vote, he/she must make a declaration of their view to the Sub-Committee and should withdraw from the Sub-Committee whilst that proposal is discussed so that the Member takes no part in the debate or voting on that particular item.
- A4.4 Sub-Committee Members who are also Members of another relevant or Public Authority or a body to which they have been appointed or nominated by the Council as its representative must exercise particular care in reconciling their two roles in cases where that Authority or body makes a representation either in support of or in opposition to a licensing application.
- A4.5 Members who have participated in a decision by another Authority or body as described above shall not agree to be called to sit on a Sub-Committee convened to discuss the application in which they have previously participated.
- A4.6 Members should not organise support for or against a licensing proposal and should not lobby other Members since this would also signal that they had made up their mind before hearing the evidence. Each Member should make up his or her own mind on the evidence and facts presented to the Sub-Committee.
- A4.7 Members must not favour or show bias for or against any particular person, company or group, or any particular site or locality. They should not put themselves in a position where they may appear to do so.
- A4.8 A Member for a Ward, which would be directly affected by an application, is most at risk of being accused of bias. Such Members are also most likely to be put under pressure to represent local 'interested parties' (i.e. objectors/supporters). It is for this reason that, whilst there are no statutory requirements for Ward Members to excuse themselves from the Sub-Committee (unless they have a prejudicial interest), those Members whose Ward includes the application or whose Ward is likely to be affected by the application are advised to not sit on the Sub-Committee, but that he/she may wish to act as, or represent, an 'interested party' – i.e. constituents/members of the public.
- A4.9 Given that the point at which a decision is made cannot occur before the Sub-Committee meeting, when all the information is to hand and has been duly considered, any political group meeting beforehand must not be used to decide how Members should vote. The use of the party whip is incompatible with the role of the Sub-Committee and shall not be used.

A5. Pre-Application Discussions / Informal Site Meetings

- A5.1 Members should not seek to advise applicants or agents about the likely acceptability of licensing proposals. They should advise prospective applicants to contact the appropriate Officer to advise on both merits and procedures. If Members do give an indication of their initial reaction to a proposal (e.g. this appears to accord with licensing policy) they should make it clear that they will only be in a position to take a final view after having considered the Officer's reports, representations and heard any debate at the Sub-Committee meeting.
- A5.2 Formal meetings of Members with any parties involved with a licensing application should be undertaken in the presence of at least one Officer and a written note should be made of that meeting.

- A5.3 Members of the Sub-Committee should ensure that they do not take part in any pre-application/pre-decision discussions and that applicants are referred to the Licensing Officer. Informal meetings with any of the parties may be misinterpreted by the public or any other party. A Member discussing issues on site or otherwise may be perceived to be more than merely receiving and absorbing information. If a Member who is to sit on the Sub-Committee is approached by persons wishing to lobby him/her as regards the licence application, then that Member must politely explain that they cannot discuss the matter and refer the lobbyist to his/her Ward Member or the Licensing Officer who can explain the process of decision making.
- A5.4 The fact that Members have discussed any licensing proposal with any party must be made clear when the application is before the Sub-Committee for determination. Copies of notes (or e-mails) should be forwarded to the appropriate Officer to be placed on file.

B. THIRD PARTY RELATIONSHIPS

B1. Lobbying of Members and Circulation of Unofficial Information

B1.1 Lobbying is an attempt to influence a Member's view in order to achieve a particular decision. It is a normal part of the political process but where Members are making statutory decisions, such as licensing decisions, it can result in decisions being made improperly, or being perceived to be made improperly with undue influence from any parties resulting in inconsistent or erratic decision-making.

B1.2 Members should treat lobbying with care and should ensure that "unofficial" views, promises or documents do not unduly influence them. Members should advise lobbyists to present their views in writing to the Licensing Officer in order that they can be formally considered in a balanced way at the Sub-Committee meeting. Alternatively Members may choose to pass on the views and or submissions of lobbyists to the Officer but should make clear that they are not giving their own views as this is a matter for formal consideration by the Sub-Committee.

Licensing decisions must be rational and be made strictly on the basis of the relevant facts, guidance and policies relating to each case. Members must not only act in a way that is fair to all parties but must be seen to do so. In particular Members must not prejudge proposals before they have read the officer's reports and considered all the evidence presented at the hearing.

Lobbying can take two forms:-

- Lobbying of Members by any party.
- Lobbying by other Members.

Lobbying may be verbal or by the circulation of letters or documents to all or some Members.

Lobbying can be particularly problematical if Members are given information or assurances by applicants that do not form part of their formal application and are, therefore, unenforceable. Problems can also arise if Members are given information by objectors which may be misleading, untrue or irrelevant. Officers face particular difficulties if they are unaware of submissions by applicants and objectors and are therefore unable to consider them and advise the Sub-Committee about them.

This would cause particular problems if the Committee based a refusal on matters which neither officers, applicant(s) nor objectors had had an opportunity to consider and comment upon.

Circulation of unofficial papers at a Committee meeting also constitutes a form of lobbying and, therefore, will not be permitted.

B2. Member Training

- B2.1 Members will be required to attend initial training sessions when first serving on the Licensing Committee (prior to serving on any Sub-Committee) and regular refresher training courses where appropriate. Members who do not participate in training will be advised that such training is necessary and Group Leaders will be asked to encourage them to participate and review their nomination for the Committee at the Annual Council meeting if an acceptable level of attendance is not achieved.
- B2.2 Members will be given regular updates to keep them informed of important changes in legislation, procedures or practices.

B3. Gifts and Hospitality

- B3.1 Members and Officers involved in the licensing process should avoid receiving gifts and hospitality from any of the parties. (The Council's Code of Conduct requires that any gift or hospitality received by Members of the value of £25 and over has to be notified in writing to the Council's Monitoring Officer within 28 days).

B4. Impartiality and Respect

- B4.1 Officers must always act impartially.
- B4.2 If Officers have a personal interest (which would include matters relating to their own financial interests, and matters which might reasonably be regarded as affecting the well-being or financial interest of themselves, a relative or a friend) or a suspicion that they may be perceived to have a personal interest, which may affect or be perceived to affect their objective, impartial professional advice, they should declare an interest and have no dealings with the application. The interest should be recorded in writing on all files held by the Council relating to the application and a copy should be sent to the Monitoring Officer. If the matter is considered at Sub-Committee the Officer's declaration shall be made at the Sub-Committee Meeting.
- B4.3 Members and Officers should treat each other with respect at all times and not do anything which is likely to compromise the impartiality of those involved in the process or to create a perception that decisions are not well-founded.
- B4.4 Members must not pressurise Licensing Officers to make any particular decisions or recommendations as regards applications (such as the ability to decide whether an application is frivolous or vexatious).